Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

vs.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
OF THE STATE OF CALIFORNIA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California, Third Appellate District

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Respondent, County of Sacramento, respectfully prays that the petition for a Writ of Certiorari in the above entitled matter be denied.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the notice to John W. and Rachel S. Walton met the due process requirements of the United States Constitution.

2. Whether there are special and important reasons for accepting certiorari in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. California Revenue and Taxation Code Section 3701:

> "After receiving the written authorization of the controller and not less than twenty-one or more than twenty-eight days before the proposed sale, the tax collector shall send a notice by registered mail of the intended sale to the last assessee of each portion of the property at his last known address. The tax collector shall make a reasonble effort to ascertain the address of the last assessee of the tax deeded property, including, but not limited to, an examination of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.
>
> The failure of the tax collector to make a reasonable effort to ascertain the address of the last assessee as required by this section shall not affect the validity of the sale."

2. Californa Revenue & Taxation Code Section 3711:

> § 3711. Deed; conclusive evidence, exception
>
> Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive.

3. The Fourteenth Amendment to the Constitution of the United States:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

John Walton, Jr. and Rachel S. Walton were the owners of the real property here in question, consisting of 20½ acres, which property was acquired by the Waltons in 1958. The Waltons resided on the property since 1958, but failed to pay any real property taxes thereon since the year 1962 (deposition of John Walton, 19; deposition of Alvord, 5).

In June of 1972, a notice was sent to Mr. and Mrs. Walton by the County of Sacramento notifying them that the property would be deeded to the State (Alvord, 5-7). Because there was an error in the deed when the same was recorded, the County again sent the notice to the Waltons on June 9, 1973, by certified mail, which was received by Mrs. Walton (Alvord, 6, lines 8-12). This was notice of the deed from the County to the State.

On October 6, 1973, the County sent out another notice of the tax deeded land sale (Alvord, 6, lines 15-16). Mr. Walton admits that he received notice of this tax deeded land sale on October 6, 1973, and that he knew it was to be sold at public auction on October 30, 1973 (John Walton, 20, lines 10-17).

Mrs. Walton signed for the June 9, 1973 notice of the property being deeded to the State by the County. She admits she had actual notice of the intended tax sale (Rachel Walton, 15-17).

Mrs. Walton also admits that she referred the matter to her attorney after becoming aware of the intended tax sale (Rachel Walton, 17). She further admits that she was aware of the sale but was unable to attend because of her illness (Rachel Walton, 18). According to the testimony of Mrs. Walton, she was in the hospital on October 6, 1973, at the time of the notice of tax sale, but was released the following day, October 7, 1973 (Rachel Walton, 18).

On October 15, 1973, Mr. and Mrs. Walton filed a Lis Pendens with the County Recorder's office of Sacramento County in the hope that this would, in some way, prevent the tax sale of October 30, 1973 (see Second Amended Cross-Complaint, page 8).

On the morning of October 30, 1973, Mr. Walton was present when the tax sale was being conducted (John Walton, 28, lines 4-8). He was standing right next to Mr. Papagianopoulos when the latter made a bid on the sale. Papagianopoulos was the highest bidder and acquired the property at said tax sale for the amount of $26,500.00 (Alvord, 11).

The tax sale was held on October 30, 1973 and was properly advertised in the newspaper as required by law (Alvord, 9-10).

Mr. and Mrs. Walton refused to vacate the premises after the sale was completed and Mr. Papagianopoulos filed suit. The cross-complaint by the Waltons followed, alleging that the County had not given notice to Mrs. Walton and for that reason the deed was void. Summary judgment for the County was granted and defendants and cross-complainants appealed.

The Court of Appeal for the State of California, Third Appellate District, sustained the ruling of the Superior Court, holding that the notice given to the Waltons was all that was required by the Constitution of the United States.

The request for a rehearing was denied, as was the petition to the California Supreme Court.

REASON AND ARGUMENT FOR DENIAL OF THE WRIT

The petition should be denied because the decision of the Court of Appeal does not involve an important question of federal law which justifies review by this Court.

As stated in Rule 19, a review on Writ of Certiorari is not a matter of right, but of sound judicial discretion. A review on writ will be granted only where there are special and important reasons, such as where a state court has decided a federal question of substance not heretofore determined by the Supreme Court, or where a state court has decided a

federal question in a way probably not in accord with the applicable decisions of this Court. *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70, 99 L.Ed. 693, 75 S.Ct. 614.

In the instant case, neither of the criteria exist for granting a review on Writ of Certiorari.

While petitioners attempt to raise issues of sex discrimination, due process and equal protection, the record below reveals that petitioner Rachel Walton had actual notice of the tax sale. There is, therefore, no reason why this court should accept this case for review.

Second, at the time the notice of the tax sale was sent to Mr. and Mrs. Walton, California community property laws made the husband the manager and controller of the community property. Civil Code Section 5127.

At the present time, said Civil Code Section has been amended so that husband and wife are joint managers and controllers of communty property.

Hence, any determination by this court that notice should have been sent to Mrs. Walton would be moot, given the change in the California community property laws regarding management and control.

Third, this court should not review the decision of the state court because it is unlikely that the constitutional issue will be reached. Having testified in her deposition that she had actual notice of the tax sale, Mrs. Walton cannot now be heard to claim a constitutional deprivation based on the fact that the written notice was addressed to her husband only. This is not the case for the United States Supreme Court to address the issue of the adequacy of notice directed only to one spouse. Furthermore, no testimony was ever produced that the County of Sacramento routinely sends notice to the husband only, and petitioners' allegation of this is without support in the record.

Another reason for this court's denying review is that the constitutional issues were not raised below. See ruling of Court of Appeal, Appendix A, p. vii, fn. 4.

The Supreme Court ordinarily will not grant certiorari whenever the basis of the state court's decision makes consideration of the asserted federal question unnecessary. *Ellis v. Dixon,* 349 U.S. 458, 99 L. Ed. 1231, 75 S. Ct. 850.

Petitioners have misstated essential facts, bringing before this Court for the first time issues that were not raised below. Initially, respondent points out that there are no citations to the record of alleged facts in petitioners' statement of the case. This Court, if it decides to review this case, will have to settle factually disputed issues before it can reach the legal issues.

Finally, the result below was accurate and fair. Where the petitioner testified under oath that she had actual notice of the tax sale, it would be entirely inappropriate for this Court to rule on the soundness of the notice and to decide whether the notice met due process requirements.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Dated, Sacramento, California,
January 4, 1978.

Respectfully submitted,
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